

AMENDED IN ASSEMBLY MAY 21, 2007

AMENDED IN ASSEMBLY MAY 8, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1587

Introduced by Assembly Member De La Torre

February 23, 2007

An act to amend Section 56.05 of the Civil Code, relating to personal information.

LEGISLATIVE COUNSEL'S DIGEST

AB 1587, as amended, De La Torre. Personal information: pharmacy.

The Confidentiality of Medical Information Act prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, unless a specified exception applies. That law excludes from the definition of marketing communications that are for a specified descriptive purpose, that are tailored to the circumstances of a particular individual, or for which the communicator does not receive remuneration from a 3rd party, as specified.

This bill would additionally exclude from the definition of marketing a written communication or written message provided to a pharmacy patient by a pharmacist or pharmacy personnel that meets specified conditions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 56.05 of the Civil Code is amended to read:

56.05. For purposes of this part:

(a) “Authorization” means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.

(b) “Authorized recipient” means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.

(c) “Contractor” means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. “Contractor” does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) “Health care service plan” means any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) “Licensed health care professional” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) “Marketing” means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

“Marketing” does not include any of the following:

(1) Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

(2) Communications made to current enrollees solely for the purpose of describing a provider’s participation in an existing health care provider network or health plan network of a

1 Knox-Keene licensed health plan to which the enrollees already
2 subscribe; communications made to current enrollees solely for
3 the purpose of describing if, and the extent to which, a product or
4 service, or payment for a product or service, is provided by a
5 provider, contractor, or plan or included in a plan of benefits of a
6 Knox-Keene licensed health plan to which the enrollees already
7 subscribe; or communications made to plan enrollees describing
8 the availability of more cost-effective pharmaceuticals.

9 (3) Communications that are tailored to the circumstances of a
10 particular individual to educate or advise the individual about
11 treatment options, and otherwise maintain the individual's
12 adherence to a prescribed course of medical treatment, as provided
13 in Section 1399.901 of the Health and Safety Code, for a chronic
14 and seriously debilitating or life-threatening condition as defined
15 in subdivisions (d) and (e) of Section 1367.21 of the Health and
16 Safety Code, if the health care provider, contractor, or health plan
17 receives direct or indirect remuneration, including, but not limited
18 to, gifts, fees, payments, subsidies, or other economic benefits,
19 from a third party for making the communication, if all of the
20 following apply:

21 (A) The individual receiving the communication is notified in
22 the communication in typeface no smaller than 14-point type of
23 the fact that the provider, contractor, or health plan has been
24 remunerated and the source of the remuneration.

25 (B) The individual is provided the opportunity to opt out of
26 receiving future remunerated communications.

27 (C) The communication contains instructions in typeface no
28 smaller than 14-point type describing how the individual can opt
29 out of receiving further communications by calling a toll-free
30 number of the health care provider, contractor, or health plan
31 making the remunerated communications. No further
32 communication may be made to an individual who has opted out
33 after 30 calendar days from the date the individual makes the opt
34 out request.

35 (4) A written communication or written message provided to a
36 pharmacy patient during a face-to-face interaction with a
37 pharmacist or pharmacy personnel, in conjunction with dispensing
38 a prescription drug, if all of the following apply:

39 (A) The communication does not involve the sale or transfer of
40 ~~individually identifiable patient~~ *medical* information by the

1 pharmacy to any other entity, *or to the pharmacy from another*
2 *entity. Additionally, the communication is based only on medical*
3 *information that has already been provided to, and maintained*
4 *by, the pharmacist as necessary to the performance of the*
5 *pharmacist's duties to fill prescriptions.*

6 (B) The communication, either in whole or in part, assists the
7 pharmacist or pharmacy personnel in meeting the goals of Section
8 601 of Public Law 104-180 with respect to the transmittal of useful
9 information regarding a prescription drug dispensed to the patient.

10 (C) The content of the communication provides information
11 regarding any of the following:

12 (i) The dispensed drug or a disease or health condition for which
13 the dispensed drug is indicated.

14 (ii) Another treatment or therapy for a disease or health condition
15 for which the dispensed drug is indicated if the content of the
16 communication does not include any mention of, or negative
17 statements regarding, the dispensed drug by proprietary or brand
18 name and the treatment or therapy satisfies one or more of the
19 following conditions:

20 (I) Is an adjunctive treatment or therapy that augments or assists
21 the dispensed drug or therapy.

22 (II) Is less expensive in the dispensing pharmacy than the
23 dispensed drug.

24 (III) Has demonstrable benefits for the patient as compared to
25 the dispensed drug based upon the prescribing information
26 approved by the federal Food and Drug Administration (FDA), a
27 finding or conclusion contained in the FDA approval package, or
28 a publicly available clinical trial. These demonstrable benefits may
29 include being more effective, having fewer or less serious side
30 effects, or offering more convenient dosing.

31 (iii) A drug dispensed to the patient during the preceding year
32 or a disease or health condition for which that drug is indicated.

33 (iv) General information about a health condition for which the
34 patient's disease or health condition puts the patient at risk and
35 that, if left untreated, may result in worsening of the health,
36 symptoms, or daily functioning of the patient.

37 (v) General information about a health condition for which the
38 patient may be at risk given the age or gender of the patient and
39 that, if left untreated, may result in worsening of the health,
40 symptoms, or daily functioning of the patient.

1 (vi) The information described in clauses (iii) to (v), inclusive,
2 shall not include any mention, by the proprietary name, brand
3 name, or generic name, of a specific drug or other product,
4 treatment, therapy, or service, other than the dispensed drug or a
5 drug dispensed to the patient during the preceding ~~three years~~ year.

6 (D) The pharmacist is available upon request of the patient to
7 answer questions regarding the communication and the
8 communication notifies the patient that he or she should consult
9 a health care provider.

10 (E) If the communication is paid for, in whole or in part, by a
11 manufacturer, distributor, or provider of a health care product or
12 service, other than the pharmacy or a business associate of the
13 pharmacy, the communication shall comply with all of the
14 following:

15 (i) The communication shall, in a clear written statement placed
16 in a clear and conspicuous location, disclose the source of the
17 sponsorship in a typeface no smaller than 14-point type.

18 (ii) If the communication is related to information referenced
19 in clause (i) , (ii), or (iii) of subparagraph (C) and mentions a
20 prescription drug or other product, treatment, therapy, or service,
21 other than the dispensed prescription drug, by its proprietary name,
22 brand name, or generic name, the communication shall also contain
23 the words “paid advertisement” in a typeface no smaller than
24 14-point type at the top of each sponsored message.

25 (iii) If a sponsored message is printed on more than one page
26 of a communication, the statement required by clause (ii) shall
27 appear on each page on which the sponsored message appears.

28 (iv) If a sponsored message is printed on more than one panel
29 of the same page of a communication, the statement required by
30 clause (ii) shall appear on each panel on which the sponsored
31 message appears.

32 (F) The communication contains instructions in a typeface no
33 smaller than 14-point type describing how the patient can opt out
34 of the portion of a pharmacy’s communication that is paid for by
35 a manufacturer, distributor, or provider of a health care product
36 or service by calling a toll-free number. No further sponsored
37 message from the pharmacy may be made to an individual who
38 has opted out after 30 calendar days from the date the individual
39 makes the opt out request.

1 (G) A majority of the printed space of the *entire* communication
2 *delivered to the patient in the pharmacy* is used for purposes other
3 than a sponsored message that is subject to clause (ii) of
4 subparagraph (E).

5 (g) “Medical information” means any individually identifiable
6 information, in electronic or physical form, in possession of or
7 derived from a provider of health care, health care service plan,
8 pharmaceutical company, or contractor regarding a patient’s
9 medical history, mental or physical condition, or treatment.

10 “Individually identifiable” means that the medical information
11 includes or contains any element of personal identifying
12 information sufficient to allow identification of the individual,
13 such as the patient’s name, address, electronic mail address,
14 telephone number, or social security number, or other information
15 that, alone or in combination with other publicly available
16 information, reveals the individual’s identity.

17 (h) “Patient” means any natural person, whether or not still
18 living, who received health care services from a provider of health
19 care and to whom medical information pertains.

20 (i) “Pharmaceutical company” means any company or business,
21 or an agent or representative thereof, that manufactures, sells, or
22 distributes pharmaceuticals, medications, or prescription drugs.
23 “Pharmaceutical company” does not include a pharmaceutical
24 benefits manager, as included in subdivision (c), or a provider of
25 health care.

26 (j) “Provider of health care” means any person licensed or
27 certified pursuant to Division 2 (commencing with Section 500)
28 of the Business and Professions Code; any person licensed pursuant
29 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
30 any person certified pursuant to Division 2.5 (commencing with
31 Section 1797) of the Health and Safety Code; any clinic, health
32 dispensary, or health facility licensed pursuant to Division 2
33 (commencing with Section 1200) of the Health and Safety Code.
34 “Provider of health care” does not include insurance institutions
35 as defined in subdivision (k) of Section 791.02 of the Insurance
36 Code.

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